

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

**MARCY WRIGHT AND
JOHN ADAM WRIGHT**

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 1:04CV92-P-D

**METROPOLITAN PROPERTY AND
CASUALTY INSURANCE COMPANY,
METLIFE AUTO & HOME, ECONOMY
PREMIER ASSURANCE COMPANY, ROYAL
CARPET SERVICE, LLC, SERVICE PRO
SOUTH, MICROBAN SYSTEMS, INC., AND
II REP-Z, INC.**

DEFENDANTS

ORDER

This cause is before the Court, sua sponte, for consideration of remand. The Court, being fully advised in the premises, finds as follows, to-wit:

That the insurance defendants removed this action from the Circuit Court of Lowndes County on March 19, 2004. The jurisdictional basis for the removal was diversity jurisdiction pursuant to 28 U.S.C. § 1332. The plaintiffs are Mississippi residents,¹ as is one of the defendants, Royal Carpet Service, LLC.² The insurance defendants asserted fraudulent misjoinder as a basis for disregarding the citizenship of the “noninsurance” defendants, including the defendant identified above.

The plaintiffs did not contest the removal by filing a motion to remand; accordingly, the Court accepts the removing defendants’ misjoinder allegations as true. No party filed a motion to sever plaintiffs’ claims against the noninsurance defendants on the basis of the misjoinder.

¹ Plaintiff’s Complaint at 1. Docket Entry [2]. See also Notice of Removal at 1. Docket Entry [1].

² Notice of Removal at 2. Docket Entry [1].

Severance would have resulted in a remand of plaintiffs' claims against Royal Carpet Service, LLC, Service Pro South, Microban Systems, Inc. and II Rep-Z, Inc.

In the interim following removal, the plaintiffs compromised and dismissed their claims against the insurance defendants as well as Microban Systems, Inc. and II Rep-Z, Inc. The Mississippi plaintiffs' only remaining claims are against Service Pro South and Royal Carpet Service, LLC, the latter of which is a Mississippi corporation.³ Accordingly, this court lacks subject matter jurisdiction. Title 28, section 1447(c) provides: "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). In accordance therewith,

IT IS, THEREFORE, ORDERED AND ADJUDGED that this cause is hereby remanded to the Circuit Court of Lowndes County, Mississippi.

SO ORDERED, this the 5th day of May, 2006.

/s/ W. Allen Pepper, Jr. _____
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE

³ Defendant A-MC, Inc.'s Answer at 2. Docket Entry [14].